

1 believed that we were getting what we
2 bargained for. Again, as I stated earlier,
3 with the information that is publicly
4 available that I'm familiar with that trying
5 to conduct the system-by-system analysis is
6 unproductive, that you depend on the MVPD and
7 you trust them that they're going to provide
8 to you all of the systems.

9 JUDGE SIPPEL: All right, we've
10 heard that many a time. How do you account --
11 let me just -- you have on schedule A, you've
12 -- it goes right down the line by regions,
13 etcetera. There's a footnote at the end that
14 says "Comcast may later launch comprising
15 250,000 service subscribers and that comes
16 after -- where is that footnote referenced up
17 above?

18 THE WITNESS: I think it's "a
19 system's launching by April 1, 2007." There's
20 an asterisk there.

21 JUDGE SIPPEL: There you go, there
22 you go. So that says -- what is that called?

1 Okay, the first -- item one. "Systems
2 launching by September 1, 2006 subject to
3 applicable subscriber notice requirements."
4 And then it list systems.

5 Then item two, "Systems launched
6 by April 2007" and then you've got the
7 footnote.

8 THE WITNESS: Yes.

9 JUDGE SIPPEL: Now was there --
10 did it dawn on anybody to say to Comcast would
11 you please point out on the map on page 514
12 the schedule A where this 150,000 is located?
13 What are you talking about?

14 THE WITNESS: This 150,000 that's
15 footnoted here?

16 JUDGE SIPPEL: Yes.

17 THE WITNESS: That would come out
18 of the systems that are listed below Roman
19 number two. That 150,000 is not the same
20 150,000 that I've been speaking about
21 regarding the Adelphia systems that they were
22 not going to launch.

1 JUDGE SIPPEL: So you got 150 here
2 that made delay the launch and then you've got
3 150,000 of Adelphia that are carved out
4 because of bandwidth?

5 THE WITNESS: Yes.

6 JUDGE SIPPEL: [REDACTED]

7 THE WITNESS: Except the
8 difference being that the 150,000 that they're
9 delaying here is part of the systems they have
10 categorized in here under Region 4 and Region
11 5.

12 JUDGE SIPPEL: Yes.

13 THE WITNESS: They're going to
14 launch them. They wanted us to agree and we
15 did that could they delay the launch of those
16 up to and no later than April 1, 2008.

17 JUDGE SIPPEL: All right. Okay.
18 If you want to ask any questions on that Mr.
19 Tollin, move on. That's up to you.

20 BY MR. TOLLIN:

21 Q You said at your deposition that
22 Comcast was required to launch MASN in the

1 former Adelphia systems under the discretion
2 clause in the agreement. I take it that's no
3 longer your testimony? Your testimony now is
4 that it was under an oral obligation?

5 A Yes. It was my understanding
6 based on oral discussions we had that that's
7 what was going to happen.

8 Q Okay. I'm going to show you an
9 exhibit.

10 (Pause.)

11 JUDGE SIPPEL: This is a document
12 dated January 20, 2007 from John Angelos to
13 ESPN Distribution. I'm sorry, in any event,
14 it's been marked as Comcast Exhibit 94. Is
15 this in evidence already?

16 MR. TOLLIN: No, Your Honor, it's
17 not.

18 JUDGE SIPPEL: We'll identify it.
19 Do you want to give an identification as to
20 what exactly it is?

21 MR. TOLLIN: It's an email chain
22 and beginning with from John Angelos to Todd

1 Webster and it's marked MASN COM 003253,
2 highly confidential.

3 It was produced by MASN.

4 JUDGE SIPPEL: That's a Bates
5 number for MASN document production. How many
6 pages on this document?

7 MR. TOLLIN: Let's see. Four.

8 JUDGE SIPPEL: Okay, it's a four-
9 page document. That will be marked as you've
10 described it. That's marked for
11 identification as Comcast 94.

12 (Whereupon, the above-referred to
13 document was marked as Comcast
14 Exhibit No. 94 for
15 identification.)

16 Ask the witness if he knows
17 anything about it.

18 BY MR. TOLLIN:

19 Q Do you know anything about this
20 email chain?

21 A It's the first time I've seen it.
22 I'm not familiar with this document.

1 Q Do you see about half way down on
2 the page, actually it's a little further than
3 that, actually. It's the bottom near the
4 bottom full email. John Angelos to Jim
5 Cuddihy, 2007, January 19th. It says "well if
6 that" --

7 A Okay.

8 Q "If that is the issue, we should
9 black out completely. We are not yet fully
10 distributed." Do you see that?

11 A Yes.

12 Q [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]

17 A I see that.

18 Q Was that your position at the
19 time?

20 A No. That's not my position. I'm
21 not sure where John got that. He might have -
22 - I just don't know. This is the first time

1 I've ever seen this.

2 Q Okay.

3 MR. TOLLIN: Your Honor, can I
4 move this into the record?

5 JUDGE SIPPEL: Any objection?

6 MR. FREDERICK: We have no
7 objection.

8 JUDGE SIPPEL: It's in as Comcast
9 94.

10 (The document, having been marked
11 previously for identification as
12 Comcast Exhibit No. 94, was
13 received in evidence.)

14 BY MR. TOLLIN:

15 Q Are you aware that Mr. Cuddihy
16 testified yesterday that any RSN worth its
17 salt would prepare a list of cable companies'
18 systems within MASN's territory before
19 entering negotiations with that company?

20 A I'm not aware of that.

21 Q Do you agree with that position?

22 A No. I do not agree with that

1 position.

2 Q He also said that the best place
3 to get the list of systems from is the cable
4 operator. I take it you're in agreement with
5 that position?

6 A Yes. I would be in agreement with
7 that position.

8 Q Did MASN provide Comcast a list of
9 systems as part of the negotiation process in
10 2005?

11 A Say that again, I'm sorry.

12 Q Did MASN provide Comcast a list of
13 systems as part of the negotiation process in
14 2005?

15 A Not that I'm aware of.

16 Q MASN did not?

17 A Yes, not that I'm aware of.

18 Q Okay. Between April 2005 and
19 August 2006, did you or anyone within MASN
20 prepare a list of Comcast systems within
21 MASN's territory?
22 List of systems.

1 A Not that I'm aware of. I did not.

2 Q Okay, do you know whether MASN had
3 a list available?

4 A Not that I'm aware of.

5 MR. TOLLIN: I'd like to approach
6 the witness --

7 JUDGE SIPPEL: Excuse me. I just
8 want to interrupt for just a second.

9 MR. TOLLIN: Sure.

10 JUDGE SIPPEL: I announced
11 scheduling yesterday that I was -- wanted to
12 leave at quarter of 12. I've changed that
13 schedule. I've rearranged my schedule to take
14 care of that. So we're here to go forward as
15 long as you want this witness, as long as
16 you're comfortable and as long as everybody
17 here is.

18 So if you want to think of a break
19 at some point, that's fine. I'd like to
20 finish the witness if we can before, by 1
21 o'clock or so. Is that doable?

22 MR. TOLLIN: Yes, I think so, Your

1 Honor.

2 JUDGE SIPPEL: All right. You
3 were going to approach the witness. Do you
4 want to do it now or do you want a recess?

5 MR. TOLLIN: I think a break would
6 be in order.

7 JUDGE SIPPEL: Are you up to that,
8 Mr. Wyche?

9 THE WITNESS: I'd like to have a
10 break. Thank you.

11 JUDGE SIPPEL: Universal
12 agreement. We're in recess for about 10,
13 well, 15 minutes.

14 (Off the record.)

15 JUDGE SIPPEL: Okay, K.C., we're
16 ready when you are. We're on the record.

17 MR. TOLLIN: Your Honor, I ask to
18 approach the witness.

19 JUDGE SIPPEL: Please, sir. Mr.
20 Tollin. You're still under oath, sir.

21 THE WITNESS: Okay.

22 (Pause.)

1 JUDGE SIPPEL: This document is
2 Comcast Exhibit 91. I'm trying to remember
3 what the status of this is.

4 MR. KIRK: It was entered in
5 yesterday, Your Honor.

6 JUDGE SIPPEL: It was entered? I
7 remember there was a little bit of a -- didn't
8 come in smoothly I don't think, did it?

9 MR. KIRK: This one did, I
10 believe, Your Honor.

11 JUDGE SIPPEL: All right.

12 (Laughter.)

13 JUDGE SIPPEL: I'm not going to
14 ask another question.

15 (Laughter.)

16 MR. KIM: For the record, Your
17 Honor, we got a hundred in very smoothly.

18 (Laughter.)

19 JUDGE SIPPEL: You set a record,
20 Mr. Kim. I don't know if anybody is keeping
21 score.

22 MR. TOLLIN: I'm very proud of

1 that.

2 JUDGE SIPPEL: Go ahead, I'm
3 sorry. I don't want to interrupt now. So
4 it's Comcast 91. It's in evidence. You may
5 proceed, Mr. Tollin. Do you have it in front
6 of you, sir?

7 THE WITNESS: I do.

8 BY MR. TOLLIN:

9 Q Have you ever seen this
10 spreadsheet?

11 A No, I've never seen this
12 spreadsheet.

13 Q So do you know that Mr. Cuddihy
14 prepared it? I guess you can't know that if
15 you haven't seen it, right?

16 A No, I don't know who prepared it.

17 Q Does this document contain a list
18 of systems operated by various cable
19 companies?

20 JUDGE SIPPEL: If you want to take
21 your time to take a look at it.

22 MR. TOLLIN: Yes.

1 JUDGE SIPPEL: Let him go off the
2 record and just look at it.

3 (Off the record.)

4 BY MR. TOLLIN:

5 Q Are Comcast systems listed in this
6 document?

7 A Can you point to me what page?

8 (Pause.)

9 Q 91-3.

10 A 91-3.

11 JUDGE SIPPEL: Trying to cover up
12 the mic, huh? That's a serious violation.
13 You'll have to answer to K.C. What page are
14 we on?

15 MR. TOLLIN: 91-3.

16 THE WITNESS: What I see is
17 there's a hole in this. I'm not trying to be
18 -- there's a hole. It says C-O-M and then
19 basic digital subs, Mid-Atlantic footprint.

20 BY MR. TOLLIN:

21 Q Does this look familiar with some
22 of the systems listed on schedule A?

1 A I don't know. I've never looked
2 at this document. It's the first time I've
3 ever seen it. I never have reviewed this
4 document.

5 JUDGE SIPPEL: You mean the copy
6 you have it looks like there's a hole punch.

7 THE WITNESS: There's a hole right
8 here. It's punched out where it says, I guess
9 it's Comcast. It's punched out.

10 JUDGE SIPPEL: Let's be sure of
11 that. Can counsel make a representation as to
12 what that says?

13 MR. TOLLIN: Yes, it says Comcast
14 and Mr. Cuddihy testified yesterday that this
15 was a list of Comcast systems. I don't think
16 he said it was exhaustive, but it was a list.

17 JUDGE SIPPEL: That he prepared.

18 MR. TOLLIN: Yes.

19 JUDGE SIPPEL: I recall that. So
20 this has been identified as a MASN document
21 and that word up there is Comcast.

22 MR. FREDERICK: Your Honor,

1 actually, can I just interject?

2 JUDGE SIPPEL: Yes, sir.

3 MR. FREDERICK: I don't think that

4 Mr. Cuddihy testified it was a MASN document.

5 I think he testified that he prepared it

6 personally, prior to his employment in MASN.

7 JUDGE SIPPEL: All right, whatever

8 the record reflects. You may have a point

9 there. Okay, but in any event, that's where

10 it came.

11 BY MR. TOLLIN:

12 Q Couldn't you have prepared similar

13 lists to this before the Comcast negotiations?

14 A You know, I don't know how this

15 list was prepared. I don't know what the

16 sources are on this list. I have no idea

17 where these numbers come from. This is the

18 first time I've ever seen this list.

19 Q Have you ever seen anyone do

20 anything like this before they entered a

21 negotiation with a cable company?

22 A In my experience, what I have

1 done, I don't prepare a list like this.

2 Q Do others?

3 A I don't know what others do.

4 Q Apparently Mr. Cuddihy does. He
5 testified yesterday that he prepared this list
6 without any input from Comcast and I'm just
7 having trouble -- he did it from public
8 sources. Why couldn't you have done the same
9 thing?

10 A My experience on the public
11 sources that I'm familiar with, as I testified
12 earlier, that it's unproductive, that the
13 information that is supplied can be very
14 inconsistent with what the actual information
15 that the MVPD provides, both in how the names
16 are of the systems and the number of
17 subscribers.

18 Q Well, the one thing that is very
19 accurate on this list is that it names
20 Harrisburg, correct?

21 A I see that it names a system
22 called Harrisburg/Hershey/Carlisle.

1 Q Right.

2 A I don't know how accurate it is.

3 This is the first time I've ever seen this
4 list.

5 JUDGE SIPPEL: I think in fairness
6 to the witness and you can confirm this, if
7 you can, that really Mr. Cuddihy said that he
8 was not attesting to any specific degree of
9 accuracy or reliability to this document. He
10 said he did put it together, however.

11 MR. TOLLIN: And he also said he
12 shared it with Mr. Angelos.

13 JUDGE SIPPEL: Yes, that's
14 correct. Yes, yes. That's true. He worked -
15 - obviously, there was a lot of work that went
16 into this, but he was not on the stand -- he
17 wasn't going to stand behind it on the stand
18 and say this is -- everything in there is gold
19 plated.

20 BY MR. TOLLIN:

21 Q Okay, with regard to the August
22 2006 negotiations, Comcast agreed to launch

1 MASN to approximately 2.2 million subscribers,
2 right? Two point two. Isn't that what your
3 testimony was earlier?

4 A Yes, I testified that it was 1.6
5 million plus 600,000. I think about 640, so
6 2.2 million.

7 Q Approximately, 2.2.

8 A That's correct.

9 Q Did Comcast launch MASN to
10 approximately 2.2 million subscribers?

11 A Did they launch --

12 Q Did they launch the 2.2, yes.

13 A Yes, as far as my understanding
14 is, yes, they did.

15 Q So your understanding is that
16 Comcast is not in breach of the agreement
17 right now, right?

18 A That's not my understanding. What
19 I stated earlier is that we assumed that we
20 were going to get all of the Comcast subs and
21 then --

22 JUDGE SIPPEL: You don't have to

1 give an explanation. Just tell him you don't
2 agree with him.

3 THE WITNESS: I don't agree with
4 that.

5 BY MR. TOLLIN:

6 Q Okay, you have testified that
7 Comcast orally indicated that 150,000 former
8 Adelphia subscribers would not receive MASN,
9 right?

10 A I'm sorry, can you restate that
11 again?

12 Q You have testified that Comcast
13 orally indicated that 150,000 former Adelphia
14 subscribers would not receive MASN?

15 A Yes, on the low-bandwidth systems,
16 yes.

17 Q Did MASN ever ask Comcast if MASN
18 would be launched on all non-Adelphia systems?

19 Did you ever ask them whether or
20 not they would launch on all non-Adelphia
21 systems?

22 JUDGE SIPPEL: That's a yes or no

1 or you don't recall.

2 THE WITNESS: I don't recall.

3 JUDGE SIPPEL: I shouldn't tell
4 you that.

5 (Laughter.)

6 THE WITNESS: I can answer it
7 another way, but you're not going to let me,
8 I guess. I have another way I should answer.

9 JUDGE SIPPEL: I understand you
10 want to expand on the answers and you can't do
11 that on cross examination unless Mr. Tollin
12 permits it. He can't abuse you, but he
13 controls the tone and the pace here.

14 BY MR. TOLLIN:

15 Q Did MASN ever ask Comcast to
16 identify the specific markets that would be
17 omitted from the carriage obligation?

18 A Yes, we asked them how many slots
19 are you going to launch on and they said they
20 were going to launch the 2.2 million and they
21 said they were not going to launch the 150,000
22 Adelphia.

1 Q I said the specific markets.

2 A Oh no, what they specifically said
3 was the Adelphia 150 in the Roanoke/Lynchburg,
4 other Virginia areas and they weren't sure
5 exactly at that time where they were located.

6 JUDGE SIPPEL: That's good.

7 BY MR. TOLLIN:

8 Q Thank you. How did you know what
9 systems would comprise the 150,000 exclusion?

10 A We didn't because when they told
11 us that there was these 150,000 that were not
12 going to be launched, they themselves said
13 they weren't sure where they were because they
14 had just recently acquired them. So they said
15 they were general areas.

16 Q You didn't care whether they were
17 in Richmond, Washington, Baltimore? You
18 didn't care?

19 A Care?

20 Q Where the 150 were coming from?

21 A Sure, we cared. At that point in
22 time they said they weren't sure. They just

1 said it was in these general areas.

2 Q But you were willing to settle
3 with
4 -- they could have all the discretion they
5 wanted to figure out where?

6 JUDGE SIPPEL: Well, it was in
7 that general area.

8 THE WITNESS: It was in the
9 general area, Roanoke, Lynchburg and other
10 Virginia areas and that was the best to their
11 knowledge at that point in time when we were
12 doing the negotiations. That's where they
13 said.

14 JUDGE SIPPEL: That was
15 acceptable.

16 THE WITNESS: It was acceptable
17 because they didn't have, at that point they
18 said --

19 JUDGE SIPPEL: I don't care why,
20 but that was acceptable. Basically, you and
21 MASN said okay.

22 THE WITNESS: Yes.

1 BY MR. TOLLIN:

2 Q So you really didn't care then
3 where the systems were located, not enough to
4 at least make them -- I mean you had the
5 option not signing the agreement, right,
6 unless they specified the systems?

7 JUDGE SIPPEL: Go ahead.

8 THE WITNESS: I wouldn't term it
9 that we didn't care.

10 JUDGE SIPPEL: You don't have to
11 agree with what he says.

12 THE WITNESS: That's your words.
13 I don't think we termed it we didn't care. It
14 was that's how they characterized it. They
15 weren't even sure themselves and so as I
16 testified earlier, the MVPD is the one that
17 has to know where the systems are.

18 JUDGE SIPPEL: That's neither here
19 nor there. I understand what you're saying
20 and why you're saying it, but the point is is
21 that he said they told that 150 are going to
22 be held back or they're not going to get them

1 and they told them it was Adelphia related and
2 they were told the general area, but that they
3 were also told that Comcast at that time
4 didn't know exactly what they had, what they
5 were talking about.

6 He said the bottom line was they
7 said okay, we'll take it.

8 BY MR. TOLLIN:

9 Q Why did the parties not simply
10 attach a list of systems not included?

11 A I guess I would answer again that
12 they didn't know exactly where these systems
13 were located and the only systems they said
14 they were not going to launch were these
15 150,000 and they weren't sure where they were
16 except these general areas.

17 Q They had to provide a list of the
18 Adelphia systems in order to get FCC approval,
19 okay, to acquire those systems. Did you ever
20 look at any of the FCC application filings?

21 A No, I did not.

22 Q Why did the agreement not state

1 that it covered all Comcast systems within
2 MASN's territory with the exception of newly-
3 acquired Adelphia markets?

4 A Well, I already answered that the
5 best way I can. And that was that when I was
6 contacted by David Gluck who told me that the
7 word "all" is going to be a strike and that
8 the wording "discretionary" is going to be
9 added and it was specifically because of these
10 Adelphia 150,000.

11 Q How could you have recommended
12 signing the agreement without knowing the
13 excluded markets?

14 A As I said, they said to us that
15 these 150,000 were going to be excluded and
16 they were on systems in the general area of
17 Roanoke, Lynchburg and other Virginia and they
18 weren't sure exactly where because they just
19 recently acquired the systems. That's what
20 happened.

21 Q In paragraph 35 of your written
22 direct, you claim that "Comcast stated that it